



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3423

by Rep. Christian L. Mitchell

SYNOPSIS AS INTRODUCED:

725 ILCS 5/116-2.2 new
725 ILCS 120/4.5
730 ILCS 5/5-5-3.1

from Ch. 38, par. 1005-5-3.1

Amends the Code of Criminal Procedure of 1963. Provides that a defendant may file a petition for resentencing in the circuit court of the county in which he or she was originally sentenced, when the conviction was for a felony or for solicitation, attempt, or conspiracy to commit a felony; provided that: (1) at the time of the offense the defendant is or had been the victim of domestic violence perpetrated by an intimate partner; (2) the effects of the domestic violence tended to excuse or justify the defendant's criminal conduct; (3) the petition shall present evidence supporting the defendant's assertion of (1) and (2) that was not presented at sentencing, and shall state why that evidence was not presented at sentencing; and (4) the defendant is incarcerated at the time the petition is filed. Provides that the burden of proof is on the defendant to establish, by a preponderance of the evidence, that at the time of the offense the defendant is or had been the victim of domestic violence perpetrated by an intimate partner, and that the effects of the domestic violence tended to excuse or justify the defendant's criminal conduct. Provides that the court may grant the petition if it determines that at the time of the offense the defendant is or had been the victim of domestic violence, and the effects of the domestic violence tended to excuse or justify the defendant's criminal conduct. Provides that if the court finds in favor of the defendant, it shall reduce the sentence in accordance with the current factors in mitigation in sentencing under the Unified Code of Corrections, as may be necessary and proper. Amends the Rights of Crime Victims and Witnesses Act and the Unified Code of Corrections to make conforming changes.

LRB099 09115 RLC 29310 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Section 116-2.2 as follows:

6 (725 ILCS 5/116-2.2 new)

7 Sec. 116-2.2. Petition for sentence modification for
8 domestic violence victims.

9 (a) As used in this Section:

10 "Domestic violence" means "abuse" as defined in Section 103
11 of the Illinois Domestic Violence Act of 1986.

12 "Felony" has the meaning ascribed to the term in Section
13 2-7 of the Criminal Code of 2012.

14 "Intimate partner" means spouses, former spouses, persons
15 who have or allegedly have a child in common, or persons who
16 have or have had a dating or engagement relationship.

17 (b) A defendant may file a petition for resentencing in the
18 circuit court of the county in which he or she was originally
19 sentenced, when the conviction was for a felony or for
20 solicitation, attempt, or conspiracy to commit a felony;
21 provided that:

22 (1) at the time of the offense the defendant is or had
23 been the victim of domestic violence perpetrated by an

1 intimate partner;

2 (2) the effects of the domestic violence tended to
3 excuse or justify the defendant's criminal conduct;

4 (3) the petition shall present evidence supporting the
5 defendant's assertion of paragraphs (1) and (2) of this
6 subsection that were not presented at sentencing, and shall
7 state why that evidence was not presented at sentencing;
8 and

9 (4) the defendant is incarcerated at the time the
10 petition is filed.

11 (c) The defendant has the burden of proof to establish, by
12 a preponderance of the evidence, that at the time of the
13 offense the defendant is or had been the victim of domestic
14 violence perpetrated by an intimate partner, and that the
15 effects of the domestic violence tended to excuse or justify
16 the defendant's criminal conduct. The petition shall be
17 supported by an affidavit. Evidence of the domestic violence
18 may include, but is not limited to:

19 (1) civil or criminal court records, proceedings,
20 pre-sentence reports, social services records, hospital
21 records, sworn statements from a witness, law enforcement
22 records, domestic incident reports, police reports,
23 witness statements prepared or elicited by law enforcement
24 officers, or orders of protection;

25 (2) local and Department of Corrections records; or

26 (3) verification of consultation with a licensed

1 medical or mental health care provider, employee of a court
2 acting within the scope of his or her employment, clergy,
3 attorney, social worker, or rape crisis counselor,
4 advocate from an agency assisting victims of domestic
5 violence, or other professional from whom the defendant has
6 sought assistance in addressing the trauma associated with
7 domestic violence.

8 Alternatively, the court may consider any other evidence it
9 deems of sufficient credibility and probative value in
10 determining whether the defendant was or had been the victim of
11 domestic violence at the time of the offense, and whether the
12 effects of the domestic violence tended to excuse or justify
13 the defendant's criminal conduct. This other evidence may
14 include, but is not limited to, the court file of the
15 proceeding in which the defendant was convicted, any action
16 taken by an appellate court in the proceeding, and any
17 transcripts of the proceeding. In its discretion the court may
18 order the defendant brought before the court for the hearing.

19 (d) Within 90 days after the filing and docketing of a
20 petition, the court shall examine the petition and enter an
21 order on the petition under this Section.

22 (1) If the defendant is without counsel and alleges
23 that he or she is without means to procure counsel, he or
24 she shall state whether or not he or she wishes counsel to
25 be appointed to represent the defendant. If appointment of
26 counsel is requested, the court shall appoint counsel if

1 satisfied that the defendant has no means to procure
2 counsel.

3 (2) If the court determines the petition is frivolous
4 or is patently without merit, it shall dismiss the petition
5 in a written order, specifying the findings of fact and
6 conclusions of law it made in reaching its decision. The
7 order of dismissal is a final and appealable judgment and
8 shall be served upon the defendant by certified mail within
9 10 days of its entry.

10 (3) If the petition is not dismissed under this
11 Section, the court shall order the petition to be docketed
12 for further consideration and hearing within 180 days of
13 the filing of the petition. Continuances may be granted as
14 the court deems appropriate.

15 (e) Within 30 days after the making of an order under
16 paragraph (3) of subsection (d) or within any further time as
17 the court may set, the State shall answer or move to dismiss.
18 In the event that a petition to dismiss is filed and denied,
19 the State must file an answer within 20 days after the denial.
20 No other or further pleadings shall be filed except as the
21 court may order on its own petition or on that of either party.
22 The court may in its discretion grant leave, at any stage of
23 the proceeding prior to entry of judgment, to withdraw the
24 defendant's petition. The court may in its discretion make the
25 order as to amendment of the petition or any other pleading, or
26 as to pleading over, or filing further pleadings, or extending

1 the time of filing any pleading other than the original
2 petition, as shall be appropriate, just, and reasonable and as
3 generally provided in civil cases.

4 (f) The court may grant the petition if it determines that
5 at the time of the offense the defendant is or had been the
6 victim of domestic violence, and the effects of the domestic
7 violence tended to excuse or justify the defendant's criminal
8 conduct.

9 (g) If the court finds in favor of the defendant, it shall
10 reduce the sentence in accordance with the factors in
11 mitigation under Section 5-5-3.1 of the Unified Code of
12 Corrections, as may be necessary and proper.

13 Section 10. The Rights of Crime Victims and Witnesses Act
14 is amended by changing Section 4.5 as follows:

15 (725 ILCS 120/4.5)

16 Sec. 4.5. Procedures to implement the rights of crime
17 victims. To afford crime victims their rights, law enforcement,
18 prosecutors, judges and corrections will provide information,
19 as appropriate of the following procedures:

20 (a) At the request of the crime victim, law enforcement
21 authorities investigating the case shall provide notice of the
22 status of the investigation, except where the State's Attorney
23 determines that disclosure of such information would
24 unreasonably interfere with the investigation, until such time

1 as the alleged assailant is apprehended or the investigation is
2 closed.

3 (a-5) When law enforcement authorities re-open a closed
4 case to resume investigating, they shall provide notice of the
5 re-opening of the case, except where the State's Attorney
6 determines that disclosure of such information would
7 unreasonably interfere with the investigation.

8 (b) The office of the State's Attorney:

9 (1) shall provide notice of the filing of information,
10 the return of an indictment by which a prosecution for any
11 violent crime is commenced, or the filing of a petition to
12 adjudicate a minor as a delinquent for a violent crime;

13 (2) shall provide notice of the date, time, and place
14 of trial;

15 (3) or victim advocate personnel shall provide
16 information of social services and financial assistance
17 available for victims of crime, including information of
18 how to apply for these services and assistance;

19 (3.5) or victim advocate personnel shall provide
20 information about available victim services, including
21 referrals to programs, counselors, and agencies that
22 assist a victim to deal with trauma, loss, and grief;

23 (4) shall assist in having any stolen or other personal
24 property held by law enforcement authorities for
25 evidentiary or other purposes returned as expeditiously as
26 possible, pursuant to the procedures set out in Section

1 115-9 of the Code of Criminal Procedure of 1963;

2 (5) or victim advocate personnel shall provide
3 appropriate employer intercession services to ensure that
4 employers of victims will cooperate with the criminal
5 justice system in order to minimize an employee's loss of
6 pay and other benefits resulting from court appearances;

7 (6) shall provide information whenever possible, of a
8 secure waiting area during court proceedings that does not
9 require victims to be in close proximity to defendant or
10 juveniles accused of a violent crime, and their families
11 and friends;

12 (7) shall provide notice to the crime victim of the
13 right to have a translator present at all court proceedings
14 and, in compliance with the federal Americans with
15 Disabilities Act of 1990, the right to communications
16 access through a sign language interpreter or by other
17 means;

18 (8) in the case of the death of a person, which death
19 occurred in the same transaction or occurrence in which
20 acts occurred for which a defendant is charged with an
21 offense, shall notify the spouse, parent, child or sibling
22 of the decedent of the date of the trial of the person or
23 persons allegedly responsible for the death;

24 (9) shall inform the victim of the right to have
25 present at all court proceedings, subject to the rules of
26 evidence, an advocate or other support person of the

1 victim's choice, and the right to retain an attorney, at
2 the victim's own expense, who, upon written notice filed
3 with the clerk of the court and State's Attorney, is to
4 receive copies of all notices, motions and court orders
5 filed thereafter in the case, in the same manner as if the
6 victim were a named party in the case;

7 (9.5) shall inform the victim of (A) the victim's right
8 under Section 6 of this Act to make a victim impact
9 statement at the sentencing hearing; (B) the right of the
10 victim's spouse, guardian, parent, grandparent and other
11 immediate family and household members under Section 6 of
12 this Act to present an impact statement at sentencing; and
13 (C) if a presentence report is to be prepared, the right of
14 the victim's spouse, guardian, parent, grandparent and
15 other immediate family and household members to submit
16 information to the preparer of the presentence report about
17 the effect the offense has had on the victim and the
18 person;

19 (10) at the sentencing hearing shall make a good faith
20 attempt to explain the minimum amount of time during which
21 the defendant may actually be physically imprisoned. The
22 Office of the State's Attorney shall further notify the
23 crime victim of the right to request from the Prisoner
24 Review Board information concerning the release of the
25 defendant under subparagraph (d) (1) of this Section;

26 (11) shall request restitution at sentencing and shall

1 consider restitution in any plea negotiation, as provided
2 by law; and

3 (12) shall, upon the court entering a verdict of not
4 guilty by reason of insanity, inform the victim of the
5 notification services available from the Department of
6 Human Services, including the statewide telephone number,
7 under subparagraph (d) (2) of this Section.

8 (c) At the written request of the crime victim, the office
9 of the State's Attorney shall:

10 (1) provide notice a reasonable time in advance of the
11 following court proceedings: preliminary hearing, any
12 hearing the effect of which may be the release of defendant
13 from custody, or to alter the conditions of bond and the
14 sentencing hearing. The crime victim shall also be notified
15 of the cancellation of the court proceeding in sufficient
16 time, wherever possible, to prevent an unnecessary
17 appearance in court;

18 (2) provide notice within a reasonable time after
19 receipt of notice from the custodian, of the release of the
20 defendant on bail or personal recognizance or the release
21 from detention of a minor who has been detained for a
22 violent crime;

23 (3) explain in nontechnical language the details of any
24 plea or verdict of a defendant, or any adjudication of a
25 juvenile as a delinquent for a violent crime;

26 (4) where practical, consult with the crime victim

1 before the Office of the State's Attorney makes an offer of
2 a plea bargain to the defendant or enters into negotiations
3 with the defendant concerning a possible plea agreement,
4 and shall consider the written victim impact statement, if
5 prepared prior to entering into a plea agreement;

6 (5) provide notice of the ultimate disposition of the
7 cases arising from an indictment or an information, or a
8 petition to have a juvenile adjudicated as a delinquent for
9 a violent crime;

10 (6) provide notice of any appeal taken by the defendant
11 and information on how to contact the appropriate agency
12 handling the appeal;

13 (7) provide notice of any request for post-conviction
14 review filed by the defendant under Article 122 of the Code
15 of Criminal Procedure of 1963, and of the date, time and
16 place of any hearing concerning the petition. Whenever
17 possible, notice of the hearing shall be given in advance;

18 (7.5) provide notice of any request for resentencing
19 filed by the defendant under Section 116-2.2 of the Code of
20 Criminal Procedure of 1963, and of the date, time, and
21 place of any hearing concerning the petition;

22 (8) forward a copy of any statement presented under
23 Section 6 to the Prisoner Review Board to be considered by
24 the Board in making its determination under subsection (b)
25 of Section 3-3-8 of the Unified Code of Corrections.

26 (d) (1) The Prisoner Review Board shall inform a victim or

1 any other concerned citizen, upon written request, of the
2 prisoner's release on parole, aftercare release, mandatory
3 supervised release, electronic detention, work release,
4 international transfer or exchange, or by the custodian of the
5 discharge of any individual who was adjudicated a delinquent
6 for a violent crime from State custody and by the sheriff of
7 the appropriate county of any such person's final discharge
8 from county custody. The Prisoner Review Board, upon written
9 request, shall provide to a victim or any other concerned
10 citizen a recent photograph of any person convicted of a
11 felony, upon his or her release from custody. The Prisoner
12 Review Board, upon written request, shall inform a victim or
13 any other concerned citizen when feasible at least 7 days prior
14 to the prisoner's release on furlough of the times and dates of
15 such furlough. Upon written request by the victim or any other
16 concerned citizen, the State's Attorney shall notify the person
17 once of the times and dates of release of a prisoner sentenced
18 to periodic imprisonment. Notification shall be based on the
19 most recent information as to victim's or other concerned
20 citizen's residence or other location available to the
21 notifying authority.

22 (2) When the defendant has been committed to the Department
23 of Human Services pursuant to Section 5-2-4 or any other
24 provision of the Unified Code of Corrections, the victim may
25 request to be notified by the releasing authority of the
26 approval by the court of an on-grounds pass, a supervised

1 off-grounds pass, an unsupervised off-grounds pass, or
2 conditional release; the release on an off-grounds pass; the
3 return from an off-grounds pass; transfer to another facility;
4 conditional release; escape; death; or final discharge from
5 State custody. The Department of Human Services shall establish
6 and maintain a statewide telephone number to be used by victims
7 to make notification requests under these provisions and shall
8 publicize this telephone number on its website and to the
9 State's Attorney of each county.

10 (3) In the event of an escape from State custody, the
11 Department of Corrections or the Department of Juvenile Justice
12 immediately shall notify the Prisoner Review Board of the
13 escape and the Prisoner Review Board shall notify the victim.
14 The notification shall be based upon the most recent
15 information as to the victim's residence or other location
16 available to the Board. When no such information is available,
17 the Board shall make all reasonable efforts to obtain the
18 information and make the notification. When the escapee is
19 apprehended, the Department of Corrections or the Department of
20 Juvenile Justice immediately shall notify the Prisoner Review
21 Board and the Board shall notify the victim.

22 (4) The victim of the crime for which the prisoner has been
23 sentenced shall receive reasonable written notice not less than
24 30 days prior to the parole or aftercare release hearing and
25 may submit, in writing, on film, videotape or other electronic
26 means or in the form of a recording or in person at the parole

1 or aftercare release hearing or if a victim of a violent crime,
2 by calling the toll-free number established in subsection (f)
3 of this Section, information for consideration by the Prisoner
4 Review Board. The victim shall be notified within 7 days after
5 the prisoner has been granted parole or aftercare release and
6 shall be informed of the right to inspect the registry of
7 parole or aftercare release decisions, established under
8 subsection (g) of Section 3-3-5 of the Unified Code of
9 Corrections. The provisions of this paragraph (4) are subject
10 to the Open Parole Hearings Act.

11 (5) If a statement is presented under Section 6, the
12 Prisoner Review Board shall inform the victim of any order of
13 discharge entered by the Board pursuant to Section 3-3-8 of the
14 Unified Code of Corrections.

15 (6) At the written request of the victim of the crime for
16 which the prisoner was sentenced or the State's Attorney of the
17 county where the person seeking parole or aftercare release was
18 prosecuted, the Prisoner Review Board shall notify the victim
19 and the State's Attorney of the county where the person seeking
20 parole or aftercare release was prosecuted of the death of the
21 prisoner if the prisoner died while on parole or aftercare
22 release or mandatory supervised release.

23 (7) When a defendant who has been committed to the
24 Department of Corrections, the Department of Juvenile Justice,
25 or the Department of Human Services is released or discharged
26 and subsequently committed to the Department of Human Services

1 as a sexually violent person and the victim had requested to be
2 notified by the releasing authority of the defendant's
3 discharge, conditional release, death, or escape from State
4 custody, the releasing authority shall provide to the
5 Department of Human Services such information that would allow
6 the Department of Human Services to contact the victim.

7 (8) When a defendant has been convicted of a sex offense as
8 defined in Section 2 of the Sex Offender Registration Act and
9 has been sentenced to the Department of Corrections or the
10 Department of Juvenile Justice, the Prisoner Review Board shall
11 notify the victim of the sex offense of the prisoner's
12 eligibility for release on parole, aftercare release,
13 mandatory supervised release, electronic detention, work
14 release, international transfer or exchange, or by the
15 custodian of the discharge of any individual who was
16 adjudicated a delinquent for a sex offense from State custody
17 and by the sheriff of the appropriate county of any such
18 person's final discharge from county custody. The notification
19 shall be made to the victim at least 30 days, whenever
20 possible, before release of the sex offender.

21 (e) The officials named in this Section may satisfy some or
22 all of their obligations to provide notices and other
23 information through participation in a statewide victim and
24 witness notification system established by the Attorney
25 General under Section 8.5 of this Act.

26 (f) To permit a victim of a violent crime to provide

1 information to the Prisoner Review Board for consideration by
2 the Board at a parole or aftercare release hearing of a person
3 who committed the crime against the victim in accordance with
4 clause (d) (4) of this Section or at a proceeding to determine
5 the conditions of mandatory supervised release of a person
6 sentenced to a determinate sentence or at a hearing on
7 revocation of mandatory supervised release of a person
8 sentenced to a determinate sentence, the Board shall establish
9 a toll-free number that may be accessed by the victim of a
10 violent crime to present that information to the Board.

11 (Source: P.A. 97-457, eff. 1-1-12; 97-572, eff. 1-1-12; 97-813,
12 eff. 7-13-12; 97-815, eff. 1-1-13; 98-372, eff. 1-1-14; 98-558,
13 eff. 1-1-14; 98-756, eff. 7-16-14.)

14 Section 15. The Unified Code of Corrections is amended by
15 changing Section 5-5-3.1 as follows:

16 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

17 Sec. 5-5-3.1. Factors in Mitigation.

18 (a) The following grounds shall be accorded weight in favor
19 of withholding or minimizing a sentence of imprisonment:

20 (1) The defendant's criminal conduct neither caused
21 nor threatened serious physical harm to another.

22 (2) The defendant did not contemplate that his criminal
23 conduct would cause or threaten serious physical harm to
24 another.

1 (3) The defendant acted under a strong provocation.

2 (4) There were substantial grounds tending to excuse or
3 justify the defendant's criminal conduct, though failing
4 to establish a defense.

5 (5) The defendant's criminal conduct was induced or
6 facilitated by someone other than the defendant.

7 (6) The defendant has compensated or will compensate
8 the victim of his criminal conduct for the damage or injury
9 that he sustained.

10 (7) The defendant has no history of prior delinquency
11 or criminal activity or has led a law-abiding life for a
12 substantial period of time before the commission of the
13 present crime.

14 (8) The defendant's criminal conduct was the result of
15 circumstances unlikely to recur.

16 (9) The character and attitudes of the defendant
17 indicate that he is unlikely to commit another crime.

18 (10) The defendant is particularly likely to comply
19 with the terms of a period of probation.

20 (11) The imprisonment of the defendant would entail
21 excessive hardship to his dependents.

22 (12) The imprisonment of the defendant would endanger
23 his or her medical condition.

24 (13) The defendant was intellectually disabled as
25 defined in Section 5-1-13 of this Code.

26 (14) The defendant sought or obtained emergency

1 medical assistance for an overdose and was convicted of a
2 Class 3 felony or higher possession, manufacture, or
3 delivery of a controlled, counterfeit, or look-alike
4 substance or a controlled substance analog under the
5 Illinois Controlled Substances Act or a Class 2 felony or
6 higher possession, manufacture or delivery of
7 methamphetamine under the Methamphetamine Control and
8 Community Protection Act.

9 (15) At the time of the offense, the defendant is or
10 had been the victim of domestic violence and the effects of
11 the domestic violence tended to excuse or justify the
12 defendant's criminal conduct. As used in this paragraph,
13 "domestic violence" means "abuse" as defined in Section 103
14 of the Illinois Domestic Violence Act of 1986.

15 (b) If the court, having due regard for the character of
16 the offender, the nature and circumstances of the offense and
17 the public interest finds that a sentence of imprisonment is
18 the most appropriate disposition of the offender, or where
19 other provisions of this Code mandate the imprisonment of the
20 offender, the grounds listed in paragraph (a) of this
21 subsection shall be considered as factors in mitigation of the
22 term imposed.

23 (Source: P.A. 97-227, eff. 1-1-12; 97-678, eff. 6-1-12; 98-463,
24 eff. 8-16-13.)